



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA- 173985

PRELIMINARY RECITALS

On April 29, 2016, the above named petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability regarding Medical Assistance. The hearing was held on June 21, 2016, by telephone.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified a request from [REDACTED] to provide personal care services to the Petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Service
1 West Wilson Street, Room 651
Madison, WI 53703

By: OIG by Letter
 1 West Wilson Street, Room 272
 P.O. Box 309
 Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner is diagnosed with Class III obesity/morbid obesity, chronic kidney disease, left shoulder pain, arthritis of the knee, chronic pain syndrome, depressive disorder, sleep apnea, high cholesterol, high blood pressure, bilateral edema in lower extremities, type 2 diabetes, and cervical arthritis. (Exhibit 5, pgs. 102-105)

3. Petitioner is 59 years old and lives alone. (Exhibit 5, pg. 40)
4. On December 7, 2015, [REDACTED] ([REDACTED]) completed a Personal Care Screening Tool. (Exhibit 5, pgs. 19-33)
5. On December 10, 2015, [REDACTED] submitted on behalf of the Petitioner, a request for prior authorization to provide 56 units/14 hours per week for 53 weeks of personal care services with 112 units/28 hours per week of travel time for the PCW, at a cost of \$39,296.32. (Exhibit 5, pg. 13)
6. On December 21, 2015, DHS sent a letter to [REDACTED] indicating that it could not access the Personal Care Screening Tool that [REDACTED] completed, because it was in an incorrect/outdated format.
7. On December 23, 2015, [REDACTED] submitted another prior authorization request. This time it asked for 24 hours over 53 weeks of travel time for the PCW and 109 units/27.25 hours of personal care services for 53 weeks at a cost of \$24,767.22. (Exhibit 5, pg. 38)
8. [REDACTED] [REDACTED] also submitted a Personal Care Screening Tool (PCST) in the correct format. According to that PCST, [REDACTED] determined the Petitioner needed assistance as follows:

Task	Level of Need	Maximum Time Allowed by Personal Care Activity Time Allocation Table ¹ / requested on PCST
Bathing	Level D	30 minutes per day
Dressing	Level D	20 minutes per day
Placement of TED Hose		10 minutes per day
Grooming	Level E 2x per day	30 minutes per day
Eating	Level C 3x per day	15 minutes per day
Mobility	Level B	Zero minutes per day
Toileting	Level D 7x per day	70 minutes per day
Transferring	Level D	30 minutes per day
Medically Oriented Task – Medication reminders	Level B	zero minutes per day
Medically Oriented Task – Glucometer Readings	4x per day	20 minutes per day
Medically Oriented Task – Vital Signs	4 x per day	20 minutes per day
Total before Incidental Tasks		245 minutes per day
Incidental Tasks = 3 of total ADL time		81.67 minutes
Total PCW time		326.67 minutes per day = 5.44 hours per day = 38.08

¹The Personal Care Activity Time Allocation Table can be found in Exhibit 4, attachment 3. It may also be viewed on-line at:
<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=565#PCSTAllocationTable>

		hours per week.
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(Exhibit 5, pgs. 40-46)

9. On January 11, 2016, DHS sent [REDACTED] Solutions a letter, indicating that information was either missing or incorrect in the request for services. (Exhibit 5, pgs. 58-61)
10. On that same day [REDACTED] Solutions faxed in their response. (Exhibit 5, pgs. 62-66)
11. On January 20, 2016, DHS sent [REDACTED] Solutions a letter indicating that DHS had another provider listed as the Petitioner's PCW agency and that [REDACTED] needed to provide verification that Petitioner was switching providers. (Exhibit 5, pgs. 67-70)
12. On an unspecified date [REDACTED] provided the requested verification and indicated that it had previously submitted it, under a differed prior authorization number. (Exhibit 5, pgs. 71-73)
13. On January 29, 2016, DHS sent [REDACTED] another letter indicating that it needed an amendment attachment. (Exhibit 5, pgs. 74-77)
14. On February 16, 2016, DHS asked [REDACTED] to submit additional clinical documentation to support the need for PCW services. (Exhibit 5, pgs. 80-83)
15. On some unspecified date, [REDACTED] submitted some medical records, and a Personal Care Addendum. (Exhibit 5, pgs. 78-126)
16. On March 8, 2016, DHS sent [REDACTED] a letter, asking for clarification on how Petitioner toilets and transfers when the PCW is not present and again requesting clinical documentation to support the need for PCW services. (Exhibit 5, pgs. 127-130)
17. On March 22, 2016, [REDACTED] submitted medical records and another PCST, which indicated the following needs:

Task	Level of Need	Maximum Time Allowed by Personal Care Activity Time Allocation Table ² / requested on PCST
Bathing	Level D, three times per week	90 minutes per week
Dressing	Level D	20 minutes per day
Placement of TED Hose		10 minutes per day
Grooming	Level E 2x per day	30 minutes per day
Eating	Level A	zero minutes per day
Mobility	Level B	Zero minutes per day
Toileting	Level D 7x per day	70 minutes per day
Transferring	Level D	30 minutes per day
Medically Oriented Task – Medication reminders	Level B	zero minutes per day

²The Personal Care Activity Time Allocation Table can be found in Exhibit 4, attachment 3. It may also be viewed on-line at:
<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=565#PCSTAllocationTable>

Medically Oriented Task – Glucometer Readings	3x per day	15 minutes per day
Medically Oriented Task – Vital Signs	4 x per day	15 minutes per day
Total before Incidental Tasks		202.86 minutes per day
Incidental Tasks = 3 of total ADL time		67.62 minutes
Total PCW time		270.48 minutes per day = 4.51 hours per day = 31.55 hours per week.

(Exhibit 5, pgs. 134-181)

18. On April 5, 2016, DHS sent to the Petitioner and [REDACTED] notices that it was denying the request for authorization of PCW services. (Exhibit 5, pgs. 182-187)
19. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 4, 2016. (Exhibit 1)
20. On June 10, 2016, DHS issued a letter indicating it was approving 20 units / 5 hours per week of PCW services. (Exhibit 4)

DISCUSSION

What are Personal Care Services?

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. *Wis. Admin. Code DHS §107.112(b)*

Why is Prior Authorization Necessary?

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

What are the Approval Criteria?

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

How Does DHS Determine the Number of Hours to Approve?

██████████, on behalf of Petitioner, requested 27.25 hours per week of active PCW service hours. According to the letter from the Department of Health Services, Office of the Inspector General, DHS initially denied the request, because ██████████ did not provide sufficient clinical documentation to justify a need for PCW services. However, after further review, DHS approved 5 hours per week of PCW services.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, ██████████, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 3 of the OIG letter, Exhibit 4.

Bathing

The most current PCST indicates the Petitioner bathes three times per week. DHS allowed 60 minutes per episode of bathing for 180 minutes per week. The Petitioner indicates that she does need assistance with getting into the tub and reaching her feet to clean them. As such, it is found that the time allowed by DHS for bathing is reasonable.

Dressing

DHS did not allow time for upper body dressing. The Petitioner testified that she does have some pain, but is able to get a shirt on. As such, it is found that DHS correctly denied time for upper body dressing.

With regard to lower body dressing DHS allowed 40 minutes per week for that task.

Per page 4 of the PCST instructions, one episode of dressing is included in the time allowed for bathing. The PCST instructions can be found in attachment 10 of Exhibit 4. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

So, time for lower body dressing is allowable on the four days, the Petitioner does not bathe. The Personal Care Activity Time Allocation Table allows 10 minutes for the task of lower body dressing, so this would be 40 minutes per week.

Time for lower body dressing in the evenings does not appear to be necessary, since the Personal Care Addendum provided by ██████████ indicates the PCW is not scheduled to be at the Petitioner's home in the evening. (Exhibit 5, pg. 93)

Based upon the forgoing, it is found that DHS correctly allowed 40 minutes per week for the task of lower body dressing.

It should be noted that [REDACTED] requested time for assistance with placing TED / anti-embolism hose. However, Wis. Admin. Code §DHS 107.112(1)(a) states that personal care services, “shall be provided upon written orders of a physician...according to a written plan of care”. In addition, Wis. Admin. Code §DHS 107.112(4)(c) specifically lists “Personal care services not documented in the plan of care” as a non-covered service. The physician order submitted by [REDACTED] in March 2016 does not contain orders for placement of TED/anti-embolism hose. (Exhibit 5, pg. 151) As such, PCW time for this task cannot be approved.

Grooming

The Petitioner testified that she is able to wash her dentures and get her wigs on, herself. As such, it is found that DHS correctly denied time for grooming.

Eating

The Petitioner does not dispute the fact that she is able to feed herself. As such, it is found that DHS correctly denied PCW time for this task.

Mobility

The Petitioner testified that she is able to move about her home safely using a cane or her walker, although four to five months ago, she fell, because her knee gave out. Although a medical note from March 9, 2016, that indicates the Petitioner reported having worsening pain, and locking and popping in her knees, there is no documentation of the Petitioner falling in her home. (Exhibit 2; Exhibit 3; Exhibit 5, pgs. 101-121 and 163-181) Based upon the foregoing, it is found that DHS correctly denied PCW assistance with mobility.

Toileting

The Petitioner testified that she is generally able to use the bathroom on her own. This is consistent with the information in Exhibit 2 that was provided by Petitioner’s primary care physician. Accordingly, it is found that DHS correctly denied time for toileting.

Transfers

The Petitioner testified that she is generally able to get out of a chair or get out of bed, using her walker. This is consistent with the information in Exhibit 2. Accordingly, it is found that DHS correctly denied PCW assistance with the transfers.

Medically Oriented Tasks

It appears that [REDACTED] only intended to request PCW time for medication reminders and glucometer readings, as medically oriented tasks. The “Vital Signs” request, was a duplicate request to assist Petitioner with her glucometer readings.

The Petitioner testified that she knows what her medications are and when to take them. There is nothing in Petitioner’s medical records that leads to a contrary conclusion. Indeed, the Petitioner reported being able to give herself injections of Bydureon at home. (Exhibit 5, pg. 169) Further, the PCST indicates that even if Petitioner needs reminders with medication, her need is not at a level that would trigger Medicaid coverage for PCW assistance with the task of medication reminders. As such, DHS correctly denied PCW assistance with medication reminders.

The Petitioner testified that she is able to check her blood sugars and does not need assistance with that task. As such, DHS correctly denied assistance with that task. It should be noted that the physician order

submitted by [REDACTED] did not contain an order to check Petitioner's blood sugars. (Exhibit 5, pgs. 151) Thus, per Wis. Admin. Code §DHS 107.112(1)(a) and Wis. Admin. Code §DHS 107.112(4)(c), PCW assistance with checking blood sugars cannot be approved.

Total Time Needed for ADLs and MOTs

Based upon the foregoing, the actual time needed to completed Petitioner's ADLs and MOTs is as follows:

1. Bathing	180 minutes per week
2. Dressing	40 minutes per week
3. Grooming	zero minutes per week
4. Eating	zero minutes per week
5. Mobility	zero minutes per week
6. Toileting	zero minutes per week
7. Transfers	zero minutes per week
8. MOTs	zero minutes per week

	220 minutes per week

Incidental Tasks

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 220 minutes is 73.33 minutes.

Thus, the total time allowed for PCW services works out to be:

220 minutes per week for ALDs
+73.33 minutes per week for incidental activities

293.33 minutes per week

293.33 minutes ÷ 15 minutes per unit = 19.5 units per week rounded to 20 units per week
20 units per week = 5 hours per week of personal care services.

DHS approved 5 hours of personal care service hours per week. As such, its modification was correct.

In reviewing this case, I did not see a request for PCW services that could be used PRN (as needed) for days when Petitioner's pain is acute and she might need additional services. Petitioner should be aware that if Home Health can show a medical need for more time, it can always submit a request [an amendment/a new prior authorization] for additional time, with evidence to show the need for the additional time. **I note to the petitioner that her provider, [REDACTED] will not receive a copy of this Decision, so the Petitioner might wish to provide a copy of the decision to [REDACTED].**

CONCLUSIONS OF LAW

DHS correctly modified a request from [REDACTED] to provide personal care services to the Petitioner.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of July, 2016

\s _____
Mayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 11, 2016.

Division of Health Care Access and Accountability